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Questions to Ask

Before

You Approve

A Bond Issue

A POCKET GUIDE FOR
ELECTED AND OTHER PUBLIC
OFFICIALS

ABOUT THIS BOOKLET

This pocket guide is designed to assist state and local officials in ensuring that their bond disclosure documents comply with federal securities laws. It includes questions that are intended to produce disclosure documents that meet the needs of a reasonable investor purchasing a jurisdiction's bonds or notes.

These questions do not set standards. They are designed to assist state and local officials in the establishment of procedures that promote good disclosure. No brief list of questions can cover every issue that may be important for a particular issue.

Financial concerns confronting one unit of government may be dramatically different from those confronting another.

This pocket guide is divided into two sections. The first contains general questions to ask yourself and your staff. Officials should be sure that their staff have an adequate understanding of the issues presented by these questions.

The second section focuses on questions that should be directed to outside professionals who have assisted in the preparation of the bond issue and related documents. Outside professionals include the bond counsel, underwriter, financial advisor, accountant, issuer's counsel, engineering firm, or other consultants.

A list is provided at the end of this document identifying resources on good disclosure practices and requirements under the federal securities laws.

THE BASICS

State and local governments have a duty under federal securities laws to produce bond disclosure documents that do not contain misstatements or omissions of “material” facts. A fact is material “if there is a substantial likelihood that a reasonable investor would consider it important in deciding whether to buy or sell bonds.” Failure to meet these requirements could result in a Securities and Exchange Commission enforcement action or private litigation.

State and local officials, therefore, should have a thorough understanding of a proposed bond issue prior to its approval and ensure that all significant information is provided to potential bondholders. An appropriate examination of a bond issue should begin by asking the following questions:

- ✓ Why are the bonds being issued?
- ✓ What is the purpose of the issue and how will the bond proceeds be used?
- ✓ What type of bonds are being issued?
- ✓ How will the bonds be repaid?
- ✓ Are there circumstances that might interfere with repayment?
- ✓ What is our financial condition and what circumstances might cause it to change?
- ✓ What options do bondholders have if revenues are not sufficient to pay them?

QUESTIONS OFFICIALS SHOULD ASK THEMSELVES AND THEIR STAFF

1 How have we allocated responsibilities for the preparation of the official statement? Have we clearly defined the responsibilities of all participants in the transaction?

2 What processes or procedures have been established to select qualified outside professionals? How are we relying on them, and is our reliance appropriate? How are they being compensated?

3 What have we done to establish the accuracy of financial and operating information and its disclosure in the official statement? Has anything happened since the date of these financial statements that needs to be disclosed?

4 What policies and procedures have we developed to determine whether material conflicts of interest exist that need to be disclosed?

5 What procedures have we established to accurately describe the project bond terms, the sources of repayment, and the risks associated with the project? What procedures have we established for the investment and disbursement of the bond proceeds?

6 Do our procedures permit the underwriters to carry out their “due diligence” and other responsibilities?

7 Have we fully considered any questions asked by the rating agencies?

8 What continuing disclosure responsibilities have we assumed and what procedures have we established to meet them? Who will determine and file the annual financial and material event disclosure information? Have we designated an individual to speak to the market on our behalf?

9 If we are relying on the bond counsel, financial advisor, or trustee to evaluate and meet our continuing disclosure requirements, what procedures are in place to keep them apprised of our financial condition and other material information?

10 Have our procedures produced an official statement that we feel accurately presents our financial condition and discloses the information a reasonable investor needs to know? Have all the right people reviewed it ?

QUESTIONS OFFICIALS SHOULD ASK OUTSIDE PROFESSIONALS

- 1 What is the nature or scope of the written opinion or certification, if any, that you are giving in this transaction and relating to the disclosure document? Have we given you access to the information you need?
- 2 Have you explained to us all aspects of the structure or nature of this transaction so that you are confident we fully understand all critical aspects? Does our official statement adequately address any concerns you have about this transaction that a reasonable investor would consider important?
- 3 Are there any matters regarding your participation in this transaction about which you should make us aware, including potential conflicts of interest?
- 4 Has your review of the relevant financial documents and other materials, including the official statement, raised any concerns regarding this borrowing? Do these concerns need to be disclosed?
- 5 Are you aware of any circumstances in which we, our staff, or others have not complied with our procedures so that we can make sure that our official statement adequately and accurately describes this transaction?

RESOURCES

- The Government Finance Officers Association offers a number of disclosure products, including disclosure guidelines, a videotape on SEC Rule 15c2-12, and a diskette containing SEC documents. A public official's guide to disclosure is scheduled for publication in 1997.
- The National Association of Bond Lawyers has disclosure publications, including a Rule 15c2-12 handbook, a book on fundamentals of municipal bond law, and information on the selection and evaluation of bond counsel. A model engagement letter is being prepared.
- Disclosure guidelines are available from the Association of Local Housing Finance Agencies, National Council of State Housing Agencies, National Council of Health Facilities Finance Authorities, the National Federation of Municipal Analysts and the American Bankers Association.
- Other sources to consult are the Municipal Disclosure Task Force Report of the National Association of State Auditors, Comptrollers and Treasurers; **It's 12 O'clock: Do You Know Where Your City's Money Is?** from the National League of Cities; and the PSA's Rule 15c2-12 Model Language.

This pocket guide has been prepared by the National League of Cities; the National Association of Counties; the National Association of State Auditors, Comptrollers and Treasurers; and the Government Finance Officers Association with input from the Securities and Exchange Commission.

Copies of this pocket guide are available from the state and local organizations listed above and from:

- Airports Council International-North America
- American Association of Port Authorities
- American Bankers Association
- American Public Power Association
- American Public Works Association
- Association of Local Housing Finance Agencies
- Association of Metropolitan Sewerage Agencies
- Association of School Business Officials International
- Council of Development Finance Agencies
- Council of Infrastructure Financing Authorities
- Education Finance Council
- International City/County Management Association
- International Municipal Lawyers Association
- Municipal Treasurers' Association
- National Association of Higher Education Facilities Authorities
- National Association of State Treasurers
- National Conference of State Legislatures
- National Council of Health Facilities Finance Authorities
- National Council of State Housing Agencies
- National Federation of Municipal Analysts
- National School Boards Association
- Public Housing Authorities Directors Association
- PSA The Bond Market Trade Association